

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

Exemption No. 5378

<p>In the matter of the petition of</p> <p>Continental Airlines, inc.</p> <p>for an exemption from §§ 121.314 and 135.169(d) of the Federal Aviation Regulations</p>	<p>Regulatory Docket No. 26715</p>
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PARTIAL GRANT OF EXEMPTION

By letter dated December 2, 1991, W. L. Bolfig, Senior Director, Quality Assurance Continental Airlines, petitioned for exemption from §§ 121.314 and 135.169(d) of the Federal Aviation Regulations (FAR) to permit a 60-day extension in the compliance time for the retrofit of Class D cargo compartment liners in Boeing Model 737 airplanes. By letters dated November 20, 1990, and February 7, 1991, Mr. Joseph D. Vreeman, Vice President, Engineering and Maintenance, Air Transport Association of America (ATA), petitioned for exemption from §§ 121.314 and 135.169(d) of the FAR to permit up to a 36- month extension in the compliance time for the retrofit of Class C and D cargo compartment liners. The petition was on behalf of all affected operators, and was partially granted in Exemption 5288. The time extension for the 737 airplanes expires on December 20, 1991.

Section of the FAR affected:

Section 121.314, as amended by Amendment 121-202, and § 135.169(d), as amended by Amendment 135-31, require, in part, that after March 20, 1991, all Class C and D cargo compartments greater than 200 cubic feet in volume, used on airplanes in air carrier, air taxi, and commercial service, have liners constructed of fiberglass or material satisfying the test requirements of § 25.855, as amended by Amendment 25-60, or, in the case of liners approved prior to March 20, 1989, aluminum. It must be noted that liners constructed of fiberglass, if not previously type certificated for use in the airplane model

involved, must be shown to comply with the regulations incorporated by reference in the type certificate for that model.

ANM-92-011-E

Related Section of the FAR:

Section 25.855(a-1)(1), as amended by Amendment 25-60, incorporates a new flame penetration test using an oil burner. Unlike §§ 121.314 and 135.168(d) which permit the use of fiberglass or aluminum construction, § 25.855(a)(1) requires this test of all liner materials in Class C and D cargo compartments on affected airplanes, regardless of whether or not the material is fiberglass. These test standards are contained in Appendix F, Part III, of Part 25. Except to the extent it is incorporated by reference in §§ 121.314 and 135.169, this section applies only to transport category airplanes for which an application for type certificate is made after June 15, 1986.

The petitioner's supportive information is as follows:

"Continental Airlines has been modifying their 737-100/-200/-300 fleet to meet the referenced requirements. The guidelines for the modifications were detailed in Boeing Service Bulletin 737-25-1254 and Service Letter 737-SL-25-48. All of our B737 aircraft will be modified by the compliance date of December 20, 1991.

"However, we recently received Revision 1 of SB 737-25-1254, which states that the velcro that attaches maintenance access flaps to the liners will not satisfy the requirements of the referenced FAR. The revision incorporates a new kit that obeys the FAA rule and requires, for the older kits already installed, the addition of snaps around the perimeter of the flaps. Although Boeing made us believe that the older SB kits would no longer be supplied to airlines, we received these kits as late as October 30, 1991. The new kits cannot be procured in time to meet the FAR deadlines. Therefore, we are initiating engineering action to install the snaps to the liners on the affected aircraft. There are two such flaps per door and two doors per aircraft, each aircraft requiring the addition of 40 to 42 snaps.

"We have begun installing the snaps but are requesting the FAA grant Continental an exemption from [§ 121.314] for the B737 fleet for a period of sixty (60) days. This would give us additional time to accomplish this last minute change in a more orderly manner. Aircraft effective to this change include 66 of 94 of Cal's B737's. We estimate that 22 of 66 aircraft will be modified by the December 20, 1991, deadline during scheduled maintenance visits. In order to modify all 66 aircraft prior to December 20, 1991, several aircraft would have to be removed from service, thereby significantly increasing the economic impact of this rule, and causing possible service disruption.

"Continental Airlines is making a good faith effort to achieve timely compliance of FAR 121.314. All Continental 737 aircraft will have the new liner with velcro flaps installed by the compliance date of December 20, 1991. Continental Airlines is only requesting a sixty (60) day exemption from the snap installation as required by revision 1 of SB 737-25-1254, dated September 5, 1991. Moreover, an exemption would not degrade the current level of safety of the B737 fleet.

The FAA finds for good cause that action on this petition should not be delayed by public comment for the following reasons. The FAA was first made aware of the extent of compliance problems with this regulation by means of petitions for exemption filed by the Air Transport Association and the Regional Airline Association, in late 1990. Exemptions were granted to those organizations (on behalf of affected operators) with the understanding that service information would be forthcoming from the airframe manufacturers as needed to achieve compliance. The compliance deadlines, as stated in those exemptions, were based on the scheduled release dates of service information and the associated time required to implement the modifications. The rationale for this further extension is the same, and in granting the petition, the FAA is not setting a precedent with respect to the overall level of safety provided in the fleet.

The Federal Aviation Administration's analysis/summary is as follows:

The petitioner's request is limited to an extension of the compliance time, as already extended by the exemption granted to ATA by Exemption 5288.

The petitioner scheduled modifications to take place in accordance with the terms of that exemption, based on information provided by the manufacturer. Modifications affecting design details were subsequently changed by the manufacturer. The petition contains data to this effect. Thus, while a substantial number of airplanes remain to be modified, the petitioner has clearly made a good faith effort to comply.

Other information as discussed in exemptions 5288 and 5289 continues to be relevant to this petition. In particular, the cost of compliance and potential removal of airplanes from service were considered to be of minimal impact when the regulation was developed. The petitioner notes that a majority of airplanes will have been modified by the required date. In addition, for the 737, only the cargo door maintenance access flap is in question. The remainder of the compartment complies with the requirements.

The petitioner has requested 60 days in addition to the time already granted in other exemptions. As noted earlier, the FAA has attempted to balance the timeliness of compliance with the safety improvement provided by the new regulations. In reviewing the petitioner's proposed compliance schedule and the number of airplanes that will have been modified by the compliance deadline, the FAA considers that a 60-day extension is excessive. Based on the apparent rate at which airplanes have been modified so far, a 45-day extension appears appropriate.

In consideration of the foregoing, I find that a partial grant of exemption is in the public interest and will not affect the level of safety provided by the regulations. Therefore, pursuant to the authority contained in §§ 313(a) and 601(c) of the Federal Aviation Act of 1958, delegated to me by the Administrator (14 CFR 11.53), Continental Airlines is hereby granted an exemption to permit operation, under the provisions of Parts 121 and 135 of the FAR, of airplanes that do not comply with the provisions of §§ 121.314 and 135.169(d) of those parts. The following limitations apply to this exemption:

1. This exemption is limited to Boeing Model 737 series airplanes.
2. This exemption expires on February 5, 1992.

Issued in Renton Washington, on December 19, 1991.

/s/ Leroy A. Keith, Manager
Transport Airplane Directorate
Aircraft Certification Service

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May 6, 2003